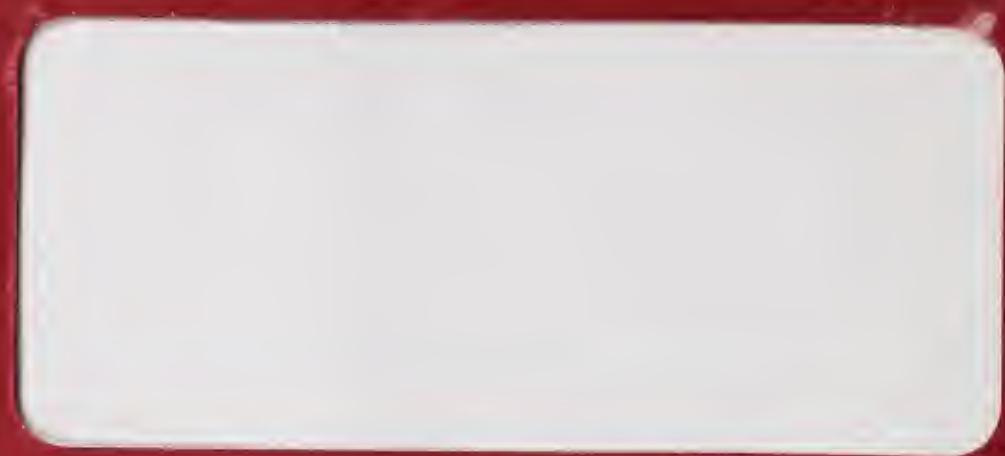


BORA LASKIN LAW LIBRARY

3 1761 09233721 1

MATERIALS ON INTERNATIONAL
LAW AND PROCESS
(1980 concise edition)

JX
3695
C3
M57
1980
C1



LAW LIBRARY

JAN 23 1980

FACULTY OF LAW
UNIVERSITY OF TORONTO

FACULTY OF LAW LIBRARY
UNIVERSITY OF TORONTO

MATERIALS ON INTERNATIONAL
LAW AND PROCESS
(1980 concise edition)

Selected and edited by
Gerald L. Morris,
Faculty of Law
University of Toronto

This concise selection of materials (from a more extensive collection prepared for a two semester, 60 hour introductory course) is intended for use in a one term, 40 hour introductory course in Public International Law and Process.

A considerable number of items included in both the concise and more complete versions of these materials were first introduced by Visiting Professor J.T. Fried when he taught the two introductory courses in international law at Toronto in 1979-80. Acknowledgment is also due to Philippe Lalonde, of the Ontario Bar, and to Patricia Vassil, LL.B., who assisted in the preparation of the 1978-79 and 1980 editions, respectively.

CONTENTS

SECTION ONE: INTRODUCTORY REFERENCE MATERIALS

General Source Books	1
International Law Literature	1
Charter of the United Nations (Text)	3
Statute of the International Court of Justice (Text)	20
Declaration on Friendly Relations Among States (Text)	28
Universal Declaration of Human Rights (Text)	55
Charter of Economic Rights and Duties of States (Text)	57
Williams and de Mestral, An Introduction to International Law (Excerpts)	41
Restatement of U.S. Foreign Relations Law (Revised) - Tentative Draft (Excerpts)	60

SECTION TWO: NATURE, SOURCES AND EVIDENCE OF INTERNATIONAL LAW

Henkin, How Nations Behave (review)	116
Harris, International Law as "Law" (excerpts from 1973 ed. of his casebook, p. 1-10)	117
Friedmann, The Reality of International Law - A Reappraisal	124
Falk, New Approaches to the Study of International Law	134
Friedmann, The Changing Dimensions of International Law	150
Schachter, Towards a Theory of International Obligation	163
Baxter, Two Cheers for International Adjudication (Correction, p. 173: Judge Baxter served less than <u>two</u> years on the ICJ)	173
Alexandrowicz, The New States and International Law	176
Cohen and Chiu, People's China and International Law	181
Articles 36, 38 and 59, Statute of the ICJ	182
Harris, Cases and Materials on International Law (excerpts from 2nd ed., pp 22-24)	183
Friedmann, et al., International Law Cases and Materials (excerpts)	184
Vienna Convention on the Law of Treaties, articles 1, 2(1) (a), 3, 6, 26, 31, 32	188
The Lotus Case (reproduced, with notes, from Harris)	189
Zenith Radio v. Matsushita (MELCO)	197
Fisheries case (United Kingdom v. Norway)	199



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

<https://archive.org/details/materialsoninter00mori>

CONTENTS (cont'd)

Right of Passage Case (Portugal v. India) (reproduced, with notes, from Harris)	203
Asylum Case (Colombia v. Peru) (reproduced, with notes, from de Vries, Cases and Materials on the Law of the Americas)	205
The Globe and Mail (Toronto), Peru Mourns Populist Leader	213
Brownlie, International Custom (from the 1966 ed. of his Principles of International Law)	213
D'Amato, Concept of Special Custom in International Law	217
North Sea Continental Shelf Cases (Fed. Rep. of Germany v. Denmark; Fed. Rep. of Germany v. the Netherlands) (Reproduced, with notes, from Friedmann, et al., and Harris)	226
Friedmann, The North Sea Continental Shelf Cases - A Critique	236
Johnston, The New Equity in the Law of the Sea	245
The Wimbledon Case (France, Italy, Japan and the U.K. v. Germany)	246
Vienna Convention on the Law of Treaties, articles 53 and 64	247
Franck, New Approaches to the Making of International Law	248
Unilateral Initiatives: a Case Study (Arctic Waters Pollution Prevention Act)	250
New York Times, Canada Acts in U.N. to Protect Arctic Against Oil Spills	250
United States' Attitude Towards the Arctic and Canada's Reply (from 1971 CYBIL)	250
Jurisdiction of the ICJ - Reservation (from the 3rd ed. of Castel, International Law Cases and Materials)	254
Sharp, Statement on Arctic waters bill (reproduced from 1971 CYBIL)	255
Macdonald, Morris and Johnston, The Canadian Initiative to Establish a Maritime Zone for Environmental Protection	257
Henkin, Arctic Anti-Pollution: Does Canada Make - or Break - International Law?	260
U.N. Draft Convention on the Law of the Sea, article 234 on ice-covered areas	264
Jamieson, Canada Pledges Continued Support for the World Organization	264
Extension of Canadian Fisheries Zones (External Affairs press release)	265
Piper, On Changing or Rejecting the International Legal Order	267
Merrills, How International Law is Changed (from his Anatomy of International Law)	268
Friedmann, The United Nations and the Development of International Law	269
Falk, On the Quasi-Legislative Competence of the General Assembly	271
Onuf, Professor Falk on the Quasi-Legislative Competence of the General Assembly	279

CONTENTS (cont'd)

Memorandum of the United Nations Office of Legal Affairs (on 'declarations' and 'recommendations' of the General Assembly)	283
UNGA Resolution on the International Court of Justice	283
United Nations Charter of Economic Rights and Duties of States (Memorandum by the Legal Bureau, Department of External Affairs)	285
Canadian Humanitarian Aid for Southern Africa (statement by the Secretary of State for External Affairs)	288
UNGA Resolution Concerning the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents	290
UNGA Resolution on Friendly Relations (editor's suggestion that text of Resolution, at p. 28 of these Materials, be reviewed at this point)	291
Advisory Opinion of the ICJ on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)	291
Letter, Recommendations and their Legal Effects (from his Law- Making by International Organizations)	297

SECTION THREE: THE RELATIONSHIP OF INTERNATIONAL LAW TO MUNICIPAL LAW

1. <u>Introduction: Friedmann, et al,</u> <u>The Relationship of International Law to Municipal Law</u>	300
2. <u>Municipal Law at the International Level:</u>	
Draft Declaration on Rights and Duties of States, 1949	300
Exchange of Greek and Turkish Populations Case	301
Brazilian Loans Case (France v. Brazil)	301
Vienna Convention on the Law of Treaties, Articles 27 and 46	302
3. <u>International Law at the National Level</u>	
(a) (i) <u>Customary Rules in Britain and Canada</u>	
Triquet v. Bath	303
R. v. Keyn	303
West Rand Central Gold Mining Co. v. R.	305
Mortensen v. Peters	306
Chung Chi Cheung v. R.	308
Thakrar v. Secretary of State for the Home Department	310
Trendtex Trading Corporation v. Central Bank of Nigeria	315
Schreuer, The Applicability of Stare Decisis to International Law in English Courts	321
Starke, An Introduction to International Law (excerpt re evidence of international law)	324
In re Piracy Jure Gentium	324

CONTENTS (cont'd)

Working Draft of Articles For Possible Inclusion in a Revised Constitution of Canada	329
Reference re Power of Municipalities to Levy Rates on Foreign Legations and High Commissioner's Residences	329
Reference re Exemption of U.S. Forces from Canadian Criminal Law	330
Gordon v. R. In Right of Canada	331
Pan American World Airways Inc v. The Queen	332
Macdonald, The Relationship between International Law and Domestic Law in Canada	334
The Executive Certificate (excerpt from Harris)	355
Duff Development Co. v. Government of Kelantan	356
Re. Chateau-Gai Wines Ltd. and Attorney-General of Canada	357
Chateau-Gai Wines Ltd. v. Institut National Des Appellations D'origine Des Vins Et Eaux-De-Vie	361
Bill S-5: An Act to Repeal The Canada - France Trade Agreement Act, 1933 and The Supplementary Canada - France Trade Agreement Act, 1935	363
R. v. Secretary of State for Home Department, Ex Parte Hosenball	364
Kindred, Acts of State and the Application of International Law in Canadian Courts	366
<u>3 (a) (ii) Customary Rules in the United States</u>	
The Paquete Habana (note from Harris, p.83)	376
Zenith Radio Corp. v. Matsushita Elec. Indus. Co. (MELCO)	377
Meeker, The Law of Nations in the National Government	378
Excerpts from Comment on Diggs v. Dent ("political questions")	378
Bergman v. De Sicyes	379
"Political Questions" (editorial note in Friedmann, et al., p. 130)	387
First National City Bank v. Banco Nacional de Cuba	387
Excerpt from case comment : Act of State Doctrine (Dunhill v. Cuba)	390
<u>3 (b) (i) Conventional Rules and the Treaty Power in the United States</u>	
Harris, Treaties and Executive Agreements (note from his casebook)	391
Friedmann, et al., editorial note quoting U.S. v. Pink and U.S. v. Belmont	392
United States Constitution, Articles I (10), II (2) and VI	394
Missouri v. Holland	394
Lissitzyn, Legal Status of Executive Agreements on Air Transportation	396
Foster and Elam v. Neilson	398
<u>3 (b) (ii) Conventional Rules and the Treaty Power in Britain and Canada</u>	
The Parlement Belge	399
I.R.C. v. Collico Dealings Ltd.	400
R. v. Chief Immigration Officer, ex parte Bibi	401
Salomon v. Commissioners of Customs and Excise	402
Blackburn v. Attorney General	403

CONTENTS (cont'd)

Morris, The Treaty-Making Power: A Canadian Dilemma	405
R. v. Burgess, ex parte Henry	426
A.-G. Can. v. A.-G. Ont. (Labour Convention Case)	426
Laskin's Canadian Constitutional Law, notes on Labour Conventions Case and related issues	433
Reference re Ownership of Offshore Mineral Rights	436
The Globe and Mail (Toronto), Newfoundland Establishing Offshore Rules	443
Herman, The Need for a Canadian Submerged Lands Act: Some Further Thoughts on Canada's Offshore Mineral Rights Problems	443
Denison Mines Ltd. v. A.-G. Canada	454
MacDonald v. Vapour Canada Ltd.	458
U.S. Federal Power Commission, Opinion on Competing Applications for an Alaskan Natural Gas Transportation Project (comments on Vapour Canada case)	464
Macdonald, The Impact of the New Non-Tariff Barrier Codes on GATT and Canada	467
Molgat-MacGuigan Report on the Constitution of Canada (excerpts)	469
Matas, The Constitution: A Comparison	470
Dept. of External Affairs, The Conference of Ministers of Education of French-Speaking Countries	471
Dept. of External Affairs, Meeting of Foreign Affairs Ministers in Dakar on December 8 and 9, 1980	471
La Forest, The Canadian Constitution and the Regulation of International Trade	473
Testimony by G.L. Morris before the Special Senate Committee on the Constitution	479
Morris, Quebec and Sovereignty: The Interface between Constitutional and International Law	481

Editor's Note: The final page in this version of these materials is page 485. Because additional materials on the treaty power/foreign affairs power in Canada were added at the last moment, a short selection of items on recognition of states and governments and on sovereign immunity has been deleted from this edition.

